

Freedom Matters

A Weekly Newsletter

Dane County, Wisconsin

Vol. , No. 33

Friday, August 23 , 2002

We are a free people in a republic, under a constitution which limits the powers of government to those necessary to secure the unalienable rights of each person to their life, liberty and property. Yet, when a legislature is in session, no one's life, liberty or property is safe. It's the curse of a democracy. That's why we have a republic instead. *Freedom Matters* dedicates itself to the fight to restore our republic. Most of the press and courts fail to do so. They've forgotten that freedom matters.

The Legality and Politics of Stopping Prosperity: Part I. The Legality Falk's Veto of a Redi-Mix Cement Plant

by Bob Bowman

On July 11, 2002, County Executive Kathleen Falk vetoed a Redi-Mix cement plant that all other units of town and county government had approved. She couched it as the veto of Zoning Petition #8402, to rezone some 11 acres on Stagecoach Road, next to a long-existing gravel pit, from A-1 Exclusive Agriculture to A-2 Agriculture.

However, the rezone petition did NOT propose a Redi-Mix cement plant. That was in a SEPARATE petition, one for a conditional use permit (a CUP), petition # 1770 (originally, #1754), over which the County Executive has no authority. The authority over CUPs is vested in the Zoning and Natural Resources Committee (ZNR) which is our county zoning agency. See the county zoning ordinance.

The relevant state statute gives to the ZNR "decision-making power that includes but is not limited to conditional use, planned unit development and rezoning." See s. 59.69(2)(bm). This subsection was enacted in Gov. Tony Earl's last budget bill, in 1987. That bill gave the county executive the right to appoint and supervise the zoning administrator. In doing so, however, sub (bm) was added to ensure that the county executive not thereby control the zoning policy and administrative decisions theretofore reserved to the county zoning agency. The author uncovered that intent of sub (bm) in several hours of scanning records at the Legislative Reference Bureau.

Thus, in a legal sense, the County Executive has tried to veto a conditional use permit by vetoing a zoning petition. It is my contention that she thereby abused her authority and/or exceeded her authority. To put this in perspective, if the 11 acres in question were sold to another party, it would have to be rezoned from A-1 Exclusive Agriculture, being under 35 acres, and A-2 Agriculture is the only appropriate

zoning district to which to rezone it. There is no basis for blocking such sale of the land, and hence, no basis for blocking the rezone. If there was no basis for blocking the rezone in that case, there is no basis for blocking it in the case of Petition #8402.

There is a further legal issue. A rezone decision is a legislative decision made by the county and the town in which the rezone is located. It starts with an administrative recommendation by the ZNR, a fact consistent with the following.

A rezone decision is constrained by zoning regulations. Regulations are enacted by the county, subject to veto by a majority of all the towns to which the zoning ordinance applies. This "shared governance" of the zoning ordinance has been blessed by the Wisconsin Supreme Court (Quinn v. Town of Dodgeville).

Thus, there are two *separate* "shared governance" legislatures involved in a rezone. One is the county plus all of the towns, that together legislate the regulations to be followed. The other is the county plus one town, that together legislate the rezone. *The latter legislature has no authority to change or violate the regulations adopted by the former legislature.*

Hence, Falk's veto of a **rezone** is constrained to follow the **regulations** of the zoning ordinance. It cannot override, supersede, amend, rewrite or violate the regulations adopted by the other legislature. Thus, Falk cannot usurp the authority assigned by the other legislature to the ZNR. She cannot refuse the rezone in order to block a use from which her authority has been excluded. To do so is to rewrite the ordinance. That abuses shared governance and towns. Sadly, it is not the first time Falk has abused the towns.

Falk claimed that the town land use plan did not allow the requested rezone. She is absurdly wrong. The town plan is completely compatible with a rezone from A-1 Exclusive Agriculture to A-2 Agriculture.

Clearly, Falk's veto was pure politics. That will be the subject of Part II of this report.

Readers' Bulletin Board. e-mail us your comments. Include your name, for publication by *Freedom Matters*

*** Published by Freedom Matters, Inc., Cross Plains, WI. 53528, Michael Byrne, Editor ***
To subscribe or unsubscribe, e-mail to rebshar@chorus.net, or call Bob at (608) 831-6653.
Our e-mail subscriber list is confidential. We will not sell it or reveal it.

Back Issues of Freedom Matters are available on request, as e-mail.